

EXHIBIT 25

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Via Email

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Re: *Sines v. Kessler*, 17 Civ. 0072 (NKM) (W.D. Va.)

Dear Messrs. Kolenich and Woodard:

I write on behalf of Plaintiffs in the above-captioned action regarding the responses and objections (“Responses”) of Defendants Cantwell, Damigo, Heimbach, Identity Evropa, Kessler, National Socialist Movement (“NSM”), Nationalist Front, Parrott, Ray, Schoep, Traditionalist Worker Party (“TWP”), and Vanguard America (collectively, “Defendants”) to Plaintiffs’ First Set of Interrogatories, served on January 25, 2018 (“Interrogatories”).¹ For the reasons set forth below, Defendants’ Responses are deficient. Plaintiffs look forward to receiving Defendants’ response to this letter by no later than May 17, 2018, and are available to meet and confer regarding Defendants’ Responses at your soonest possible convenience over the next week.

As an initial matter, Plaintiffs note that Defendants’ failure to fully respond to Plaintiffs’ discovery requests in a timely manner is hampering Plaintiffs’ ability to obtain relevant discovery, including from third parties. Plaintiffs appreciate your agreement during our May 3, 2018 meet and confer to, among other things, provide SCA consents as well as a list of Defendants’ electronic devices, email accounts, and Discord handles, all of which is consistent with many of the points set forth below. If, however, Defendants continue to withhold responsive information that in any way prevents Plaintiffs from obtaining third-party discovery or unnecessarily increases the costs of obtaining that discovery, Plaintiffs reserve the right to seek relief from the Court.

Defendants Have Waived Any Objections to the Interrogatories: Defendants do not object to any of the Interrogatories, and have therefore waived any objections. *See* Fed. R. Civ. P. 33(b)(4) (“Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure.”); *Ayers v. Cont’l Cas. Co.*, 240 F.R.D. 216, 222 (N.D.W. Va. 2007) (“[T]he failure to raise an objection within the time period allowed by the Rules will result in

¹ Capitalized terms used in this letter have the same meaning as in the Interrogatories.

waiver of the objection unless the party seeking to raise the objection can show good cause for the failure.”).

Defendants Have Failed to Properly Verify Their Responses: Pursuant to Rules 33(b)(3) and (5), a party is required to answer interrogatories “in writing under oath” and “must sign them.” Fed. R. Civ. P. 33(b)(3), (5). Several of the Defendants, including but not limited to NSM, Nationalist Front, and Schoep, have not properly verified their Responses, but instead have had them notarized without any signature and/or verification by the Defendant. Plaintiffs request that, pursuant to Rule 33(b), each of the Defendants that have not already done so properly verify their Responses or any revised Responses that they serve in response to this letter.

Defendants Have Failed to Provide Adequate Responses Where Accounts and Websites Have Been Suspended or Deleted: Suspension, deactivation, or deletion of Social Media accounts or posts does not shield otherwise relevant material from discovery.² See, e.g., *Romano v. Steelcase Inc.*, 30 Misc. 3d 426, 435 (N.Y. Sup. Ct. 2010) (ordering plaintiff to deliver to defendant a consent and authorization as required by social media website operators to gain access to plaintiff’s social media records “including any records previously deleted or archived by said operators”). Consequently, Defendants who responded that their accounts, messages, or posts were “banned,” “shut down,” “deleted,” “suspended,” or provided a similar response must answer the Interrogatories in full and to the best of their knowledge. See Fed. R. Civ. P. 33(b)(3) (requiring that interrogatories be answered “fully in writing under oath”); Instr. I of Pls.’ First Set of Interrogs.

Defendants Have Failed to Answer Interrogatories on Behalf of Persons or Entities Acting for Them or on Their Behalf: Defendants, particularly those that are not natural persons, should be sure that they have fully answered each Interrogatory, bearing in mind that the Interrogatories are addressed to and include “any persons or entities acting for them or on their behalf, including but not limited to all representatives, servants, agents, employees, officers, affiliates, subsidiaries, parent companies, third parties, attorneys, as well as any entities over which any of the Defendants have control.” Definition 8 of Pls.’ First Set of Interrogs. For example, Defendant Nationalist Front answered “none” in response to Interrogatory No. 1. Given that Defendants Schoep and Heimbach, both agents of Nationalist Front, communicated regarding the Events, “none” is a clearly incomplete response to this interrogatory.

Interrogatory No. 1: Interrogatory No. 1 requests that each Defendant identify all means of communication used by the Defendant to communicate concerning the Events, and all of the names, aliases, phone numbers, and Social Media Handles used in connection with those communications. Defendants’ responses are incomplete. Defendants: (1) omit all or some means of communication clearly used to communicate regarding the Events; and (2) fail to provide full account information associated with each means of communication identified.

² Moreover, although Defendant Kessler states that his Facebook account no longer exists, an account appearing to be associated with Defendant Kessler is currently accessible. See <https://www.facebook.com/authorjasonkessler/>.

By way of example only, Defendants—including Cantwell, Damigo, Heimbach, Kessler, NSM, Parrott, Ray, and Schoep—did not respond that they used phone calls, text messages, or emails to communicate regarding the Events, despite providing their phone numbers and email addresses in response to Interrogatory No. 4, which asked Defendants to identify all Electronic Devices used to communicate concerning the Events. Defendant Cantwell’s failure to identify phone calls or text messages as a means of communication is particularly problematic given that his initial document production contains several recorded calls between himself and other individuals regarding the Events, as well as a spreadsheet of text messages. Attached as Exhibit A is a chart setting forth additional examples of other deficiencies that should be corrected in each Defendant’s Response to Interrogatory No. 1.³

Plaintiffs request that Defendants supplement their Responses to include *each and every* means of communication used to communicate regarding the Events. For each of these means of communication, including those previously disclosed, Defendants should provide *all* names, aliases, email addresses, phone numbers, and Social Media Handles used in connection with those communications, even if those accounts were subsequently suspended or deleted. Defendants should insure that they have provided their Discord 18-digit identifiers or Discord user handles including their four-digit numbers.

Interrogatory No. 2: Interrogatory No. 2 requests that each Defendant identify any “channel” or “server” on Discord to which the Defendant had access. Defendants’ responses are inadequate in several respects. First, several Defendants, including NSM, Nationalist Front, and Schoep, each responded “none” or some variation thereof. Plaintiffs request that each of these Defendants who gave such a Response either confirm in writing that their Response to Interrogatory No. 2 is complete or supplement the Response accordingly. Second, numerous other Defendants, including Cantwell, Damigo, Heimbach, Kessler, Parrott, Ray, TWP, and Vanguard America, responded to Interrogatory No. 2 by referring to their Response to Interrogatory No. 1. But Interrogatory No. 1 asks Defendants to identify the “means of communication” used to communicate concerning the Events, whereas Interrogatory No. 2 specifically asks for *any* “channel” or “server” on Discord to which each Defendant had access from January 1, 2015, to the present.

Plaintiffs request that Defendants amend their Responses to provide the information requested in Interrogatory No. 2, including not only the Discord server names, but also the channel names on each of those servers, to which they had access.

Interrogatory No. 3: Interrogatory No. 3 requests that each Defendant identify all persons with whom the Defendant communicated concerning the Events. Defendants’ Responses are once again incomplete, in addition to their non-compliance with Instruction D of the Interrogatories. By way of example only, in response to Interrogatory No. 3, Defendant Cantwell identified only Defendants Kessler, Mosley, and Spencer, and an individual known to Cantwell as “Curt.” An initial review of Cantwell’s document production, however, reveals several recorded calls with other individuals, including a woman, about the Events. Moreover, in a documentary produced by *Vice* about the events in Charlottesville, Mr. Cantwell can be seen

³ This letter and the attached chart are not meant to identify all deficiencies, but instead provide examples that Defendants may use in preparing any supplemental Responses.

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4

interacting with his “Radical Agenda” group, but none of the individuals in that group appear to have been identified in Mr. Cantwell’s Response to Interrogatory No. 3. Attached as Exhibit A is a chart setting forth additional examples of why Defendants’ Responses to Interrogatory No. 3 appear to be incomplete.⁴ In addition, Defendant Nationalist Front’s Response of “none,” and Defendants Identity Evropa, TWP, and Vanguard America’s complete non-responses to Interrogatory No. 3 should be amended.

Plaintiffs request that, based on the foregoing, each Defendant supplement its Response to Interrogatory No. 3. For any person about whom full details are not known—such as the “anonymous posters on Discord” that Mr. Kessler has included in his Response—Defendants should, pursuant to Instruction I, set forth all information that is known to them about those individuals.

Interrogatory No. 4: Interrogatory No. 4 asks Defendants to identify all Electronic Devices used by them to communicate concerning the Events, whether before, during, or after the Events. Plaintiffs request that Defendants Cantwell, Damigo, Heimbach, Kessler, NSM, Parrott, Ray, and Schoep clarify whether they used computers or other similar devices, in addition to cell phones, to communicate concerning the Events. Plaintiffs also request that Defendants Identity Evropa, TWP, and Vanguard America revise their non-Responses, which state that their communications were handled by certain members or simply state “VA member desktop computers or mobile devices.” For all Electronic Devices listed in response to Interrogatory No. 4, each Defendant is requested to state the nature, type, and location of the device and identify the person (natural or non-natural) who has custody or control over the device, consistent with Instruction D.iii.

Again, Plaintiffs look forward to receiving Defendants’ response to this letter by no later than May 17. Plaintiffs reserve all rights with respect to the Interrogatories and Defendants’ Responses.

Sincerely,



Gabrielle E. Tenzer

cc: Plaintiffs’ Counsel of Record

⁴ See footnote 3.

Exhibit A*

Defendant	Response to Interrog. No. 1 Deficiencies	Response to Interrog. No. 3 Deficiencies
Cantwell	<ul style="list-style-type: none"> Failed to provide complete account information for each means of communication listed. Failed to provide the 18-digit account identifier or user handle (including its four-digit number) associated with Discord account. 	<ul style="list-style-type: none"> See Letter.
Damigo	<ul style="list-style-type: none"> Did not include phone or email, but provided phone number and email address in response to Interrogatory No. 4. Failed to provide complete account information for each means of communication listed. Failed to provide the 18-digit account identifier or user handle (including its four-digit number) associated with Discord account. 	<ul style="list-style-type: none"> Responded that Eli Mosley (a/k/a Elliot Kline) is the <i>only</i> person with whom Damigo communicated regarding the Events, but Damigo can be seen in multiple videos speaking with numerous persons in Charlottesville during the Events.
Heimbach	<ul style="list-style-type: none"> Did not include phone, text messages, email, or Periscope, but provided phone numbers and email addresses in response to Interrogatory No. 4. Failed to provide complete account information for each means of communication listed. Failed to provide the 18-digit account identifier or user handle (including its four-digit number) associated with Discord account. 	<ul style="list-style-type: none"> Led a contingent of TWP members during the Events, including multiple TWP “officers,” but such officers, including Derrick Davis, are not included in the Response. Gave interviews to reporters who are not included in the Response.

* The deficiencies identified in this chart are in addition to those specified in the letter. Together, the letter and the chart are not meant to identify all deficiencies, but instead provide examples that Defendants may use in preparing any supplemental Responses.

Exhibit A*

Defendant	Response to Interrog. No. 1 Deficiencies	Response to Interrog. No. 3 Deficiencies
Identity Evropa	<ul style="list-style-type: none"> Failed to provide complete account information for each means of communication listed. Should confirm that Bitchute was not used as a means of communication. Failed to provide the 18-digit account identifier or user handle (including its four-digit number) associated with Discord account. 	<ul style="list-style-type: none"> See Letter.
Kessler	<ul style="list-style-type: none"> Did not include phone, text messages, email, or Periscope, but provided phone numbers and email addresses in response to Interrogatory No. 4. Failed to provide complete account information for each means of communication listed. Failed to provide the 18-digit account identifier or user handle (including its four-digit number) associated with Discord account. 	<ul style="list-style-type: none"> Gave several interviews regarding the Events, and coordinated with Charlottesville city officials concerning the Events, but none of these conversations is reflected in the Response.
National Socialist Movement	<ul style="list-style-type: none"> Did not include Gab, phone, or email, but provided phone number and email address in response to Interrogatory No. 4. Failed to provide complete account information for each means of communication listed. Should confirm that Bitchute was not used as a means of communication. Failed to provide the 18-digit account identifier or user handle (including its four-digit number) associated with Discord account. 	<ul style="list-style-type: none"> Failed to specify members of organization with whom Defendant communicated.

* The deficiencies identified in this chart are in addition to those specified in the letter. Together, the letter and the chart are not meant to identify all deficiencies, but instead provide examples that Defendants may use in preparing any supplemental Responses.

Exhibit A*

Defendant	Response to Interrog. No. 1 Deficiencies	Response to Interrog. No. 3 Deficiencies
Parrott	<ul style="list-style-type: none"> States “responsive TWP information from Discord been published at unicornriot.ninja,” but does not say anything about Defendant Parrott’s information on Discord. 	<ul style="list-style-type: none"> After August 12, 2017, Defendant Parrott published an account of his experience in Charlottesville in which he described numerous interactions with assorted “fighters,” Identity Evropa members (including specifically “two Identity Evropa allies” who rode in his car on August 12), TWP members, NSM members, League of the South members, Daryl Lamont Jenkins, Andy Nowicki, and Father Matthew Raphael Johnson, none of whom are included in the Response. Defendant Parrott was also arrested on August 12, 2017, and spent time in police custody, which suggests he communicated with police officers about the Events, even though no police officers are included in the Response.
Nationalist Front	<ul style="list-style-type: none"> Failed to provide the 18-digit account identifier or user handle (including its four-digit number) associated with Discord account. 	<ul style="list-style-type: none"> See Letter.
Ray	<ul style="list-style-type: none"> Did not include phone, text messages, or email, but provided phone numbers and email addresses in response to Interrogatory No. 4. Failed to provide the 18-digit account identifier or user handle (including its four-digit number) associated with Discord account. 	<ul style="list-style-type: none"> Failed to include in the Response any of the reporters with whom he discussed the Events in widely distributed news reports, including the <i>Vice</i> report.

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Exhibit A*

Defendant	Response to Interrog. No. 1 Deficiencies	Response to Interrog. No. 3 Deficiencies
Schoep	<ul style="list-style-type: none"> • Did not include phone, email, Discord, or Gab, but provided a phone number and email address in response to Interrogatory No. 4. • Did not include personal website, www.jeffschoep.com. • Failed to provide complete account information for each means of communication listed. 	<ul style="list-style-type: none"> • Failed to specify members of organization with whom Schoep communicated.
TWP	<ul style="list-style-type: none"> • Failed to provide complete account information for each means of communication listed. • Failed to provide the 18-digit account identifier or user handle (including its four-digit number) associated with Discord account. 	<ul style="list-style-type: none"> • See Letter.
Vanguard America	<ul style="list-style-type: none"> • Failed to provide complete account information for each means of communication listed. • Failed to identify the “Southern Front” Discord server. • Failed to provide the 18-digit account identifier or user handle (including its four-digit number) associated with Discord account. 	<ul style="list-style-type: none"> • See Letter.

* The deficiencies identified in this chart are in addition to those specified in the letter. Together, the letter and the chart are not meant to identify all deficiencies, but instead provide examples that Defendants may use in preparing any supplemental Responses.